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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 JAMES STEWART, et al.,

9 Plaintiffs,

10 v.

11 MARTI MCCALED, et al.,

12 Defendants.

CASE NO. C18-5407 BHS

ORDER GRANTING
DEFENDANTS' MOTION TO
DISMISS AND DENYING
DEFENDANTS' MOTION FOR
SANCTIONS

13 This matter comes before the Court on Defendants' motion to dismiss and motion
14 for sanctions. Dkt. 7. Also before the Court is Plaintiffs' motion for an extension of time
15 to file a response, which the Court grants. Dkt. 13. The Court has considered the
16 pleadings filed in support of and in opposition to the motion and the remainder of the file
17 and hereby grants Defendants' motion to dismiss and denies Defendants' motion for
18 sanctions.

19 Plaintiffs filed their complaint on May 21, 2018. Dkt. 1. In their complaint,
20 Plaintiffs allege that Plaintiff James Stewart was blinded in his left eye due to medical
21 negligence, that the defendant attorneys lied in his subsequent malpractice lawsuit, and
22 that Judge Bryan Chushcoff resolved the case in the defendant doctor's favor. *Id.*

1 Subsequent pleadings reveal further allegations by Plaintiffs that Defendant McCaleb
2 presented a false statement that Plaintiff had previously been ordered to file his suit
3 within one year, and Judge Chushcoff consequently granted the defendant doctor's
4 motion for summary judgment predicated on a statute of limitations argument. Dkts. 13,
5 15, 17. Judge Chushcoff also allegedly denied a motion for reconsideration. *See* Dkt. 17.
6 Plaintiffs further allege that they would have received a one million dollar settlement had
7 the case been allowed to proceed to trial. Dkt. 1 at 5. Plaintiffs' complaint claims that
8 these actions constitute a violation of due process. *Id.* at 3.

9 On May 31, 2018, Defendants moved to dismiss the complaint and filed a
10 contemporaneous motion for sanctions. Dkts. 7, 8. On June 26, 2018, after the time to
11 respond had passed, Plaintiffs requested additional time to respond. Dkt. 13. On July 9,
12 2018, Plaintiffs filed a response. Dkt. 7. On July 12, 2018, Defendants filed a reply
13 reincorporating their previous reply. Dkts. 11, 12, 16. On July 23, 2018, Plaintiffs filed a
14 surreply. Dkt. 17.

15 **A. Motion for Extension**

16 As a preliminary matter, the Court observes that Plaintiffs have already filed a
17 response to Defendants' motions, notwithstanding the responsive pleadings'
18 untimeliness. *See* Dkts. 15, 17. The Court has considered these pleadings in its review of
19 the merits of Defendants' motions. Accordingly, Plaintiffs' motion for an extension of
20 time (Dkt. 13) is deemed to have been granted.

1 **B. Motion to Dismiss**

2 Plaintiffs’ allegations plainly fail to state a claim of deprivation of due process. At
3 most, Plaintiffs’ claims against Judge Chushcoff express that Plaintiffs are dissatisfied
4 with the state court’s result in their previous proceeding. However, “a losing party in state
5 court is barred from seeking what in substance would be appellate review of the state
6 judgment in a United States District Court, based on the losing party’s claim that the state
7 judgment itself violates the loser’s federal rights.” *Bennett v. Yoshina*, 140 F.3d 1218,
8 1223 (9th Cir. 1998) (quoting *Johnson v. DeGrandy*, 512 U.S. 997, 1005–06 (1994), *cert.*
9 *denied*, 525 U.S. 1103 (1999)). Furthermore, Judge Chushcoff is plainly entitled to
10 judicial immunity in his decisions to grant summary judgment against Plaintiffs and deny
11 their motion for reconsideration. *Stump v. Sparkman*, 435 U.S. 349, 356 (1978) (“A judge
12 is absolutely immune from liability for his judicial acts even if his exercise of authority is
13 flawed by the commission of grave procedural errors.”). Finally, to the extent that
14 Plaintiffs bring due process claims against the remaining defendants, they are not state
15 actors.

16 Plaintiffs’ only asserted claim is a purported deprivation of due process. To the
17 extent that Plaintiff alleges that attorneys for the defendant doctor in his prior lawsuit lied
18 in those proceedings, the Court notes that allegations of such conduct by a non-state actor
19 do not state a federal claim over which the Court has original jurisdiction. Even if
20 Plaintiffs’ complaint can be construed to identify some cause of action under state law,
21 because the only implication of a federal claim is Plaintiffs’ bald assertion of a due
22 process violation, the Court need not consider any additional claims. *See* 28 U.S.C. §

1 1367(3); *Sikhs for Justice “SFJ,” Inc. v. Facebook, Inc.*, 144 F. Supp. 3d 1088, 1096
2 (N.D. Cal. 2015) (“[W]here a district court has dismissed all claims over which it has
3 original jurisdiction, it may *sua sponte* decline to exercise supplemental jurisdiction over
4 remaining state law claims.”).

5 **C. Motion for Sanctions**

6 Regarding Defendants’ motion for sanctions, they have outlined a series of
7 conduct whereby it plausibly could be concluded that Plaintiffs have engaged in a pattern
8 of vexatious and frivolous litigation. Dkts. 8, 9, 18. Federal courts have the discretion to
9 prevent litigants from engaging in frivolous litigation. *See* 28 U.S.C. § 1651; *Clinton v.*
10 *United States*, 297 F.2d 899 (9th Cir. 1961). Litigation misconduct, such as frivolous
11 complaints, are also sanctionable under the Court’s inherent powers. *See* Local Rules
12 W.D. Wash. LCR 11(c) (giving the court authority to sanction a party who “presents to
13 the court unnecessary motions or unwarranted opposition . . . , or who otherwise so
14 multiplies or obstructs the proceedings in a case”). Accordingly, the Court possesses
15 the authority to both enjoin Plaintiffs’ future filings and to issue sanctions if it determines
16 that Plaintiffs are abusing the judicial process by acting vexatiously, wantonly, or with
17 oppressive motives. *See Gomez v. Vernon*, 255 F.3d 1118, 1133–34 (9th Cir. 2001)
18 (citing *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 766 (1980)). The Court declines to
19 do so presently, but Plaintiffs are notified of the Court’s authority and that sanctions may
20 be imposed if the Court determines in the future that its resources are being wasted on
21 vexatious lawsuits. Defendants’ motion for sanctions (Dkt. 8) is denied.

1 **D. Leave to Amend**

2 The legal shortcomings of Plaintiffs' claim are not a matter that can be resolved by
3 amendment. *Garmon v. Cty. of Los Angeles*, 828 F.3d 837, 842 (9th Cir. 2016) ("A
4 district court abuses its discretion by denying leave to amend unless amendment would
5 be futile or the plaintiff has failed to cure the complaint's deficiencies despite repeated
6 opportunities."). Because amendment would be futile, Plaintiffs' due process claim is
7 dismissed with prejudice and without leave to amend.

8 Therefore, it is hereby **ORDERED** that:

9 1. Defendants' motion to dismiss (Dkt. 7) is **GRANTED** and Plaintiffs'
10 claims are dismissed as stated in this order;

11 2. Defendants' motion for sanctions (Dkt. 8) is **DENIED**;

12 3. Plaintiffs' motion for an extension of time to respond (Dkt. 13) is
13 **GRANTED** and the Court has accepted Plaintiffs' late-filed pleadings.

14 The Clerk shall enter a **JUDGMENT** and close the case.

15 Dated this 15th day of August, 2018.

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18 BENJAMIN H. SETTLE
19 United States District Judge
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